



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

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**DECISION OF THE BOARD**

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Mailed and Filed: FEBRUARY 27, 2023

IN THE MATTER OF:

Appeal Board No. 626395

PRESENT: GERALDINE A. REILLY, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant voluntarily separated from employment without good cause.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed August 12, 2022 (), the Administrative Law Judge sustained the employer's objection of misconduct and overruled the initial determination.

The Appeal Board, on its motion pursuant to Labor Law § 620 (3), has reopened and reconsidered the Judge's decision.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant was employed as a full-time data coordinator for a temp agency since August 2019. In February 2021, the claimant went on a paid leave of absence to provide care for her son. She was expected to return to work at the end May 2021. At the end of May 2021, the claimant spoke to the human resource manager about extending her leave of absence. The human resource manager told the claimant that she could extend her leave of absence for an additional three months but it would be unpaid. The human resource manager told her that the position might not be available to her when she

returned from her extended leave, but also told her that other positions may be available. The claimant told the manager that she understood and her extended leave was granted.

On October 4, 2021, the human resource manager contacted the claimant about returning to work. She told the claimant that her prior position had been filled, but there were other positions available. She told the claimant that there was a medical records position with the same rate of pay as her previous position. The claimant told the manager that she would be interested in that position. On October 5, the human resource manager left a message for the claimant about open positions that were available and requested that she return her phone call to discuss the matter further. The claimant did not return her call.

On October 11, the human resource manager sent a letter to the claimant, by regular and certified mail, informing her that she spoke to the claimant by telephone on October 4, 2021 about returning to work, and that she left her a message on October 5, 2021 regarding open positions available and requested that the claimant return her phone call. The letter further stated that if she did not hear back from the claimant by October 25, the employer would be left with no option but to terminate her employment. The letter included the human resource manager's phone number and email address. The employer received the return receipt on October 18, 2021, indicating that the letter had been delivered. The claimant received the letter. The claimant did not contact the human resource manager by October 25.

**OPINION:** The evidence establishes that the claimant voluntarily quit her employment when she did not return to work or contact the employer's human resource manager by October 25 following her extended leave of absence. We credit the employer's testimony over the claimant's less credible version of events. For example, the claimant admitted that she had informed the Department of Labor that the human resource manager advised her on August 30, 2021 that her position was no longer available. However, at the hearing, the claimant admitted she had her dates incorrect. Further, the claimant could not remember when she received the October 11 letter, but acknowledged reading it at the end of October or early November 2021, after her employment ended. Although the claimant contended that she never heard back from the human resource manager, the claimant later stated that she could not remember if the human resource manager left a message for her on October 5. Accordingly, we conclude that the claimant's failure to respond to the human resource

manager's letter is tantamount to job abandonment and that the claimant voluntary left her employment without good cause.

DECISION: The decision of the Administrative Law Judge is modified as follows and, as so modified, is affirmed.

The employer's objection, contending that the claimant should be disqualified from receiving benefits because the claimant voluntarily separated from employment without good cause, is sustained, effective June 1, 2021.

The initial determination, holding the claimant eligible to receive benefits, is overruled.

The claimant is denied benefits with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER